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the jury of a character not physically impossible or inherently incredible, which, if credited by the jury, is sufficient to sustain the verdict, it is reversible error to set it aside.

[Ed. Note.—For other cases, see 10 Va.-W. Va. Enc. Dig. 453.]

2. Brokers (§ 50*)—Entitled to Commission When Purchaser Ready, Willing, and Able to Purchase under Owner's Terms Produced.—The liability of the owner to the agent for commissions depends on whether the agent, at the time fixed for the completion of a contract of sale, which the agent relies on as entitling him to commissions, has produced a purchaser ready, willing, and able to comply with the land-owner's terms of sale as stipulated in the owner's contract or as varied by mutual consent.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 266.]

3. Brokers (§ 50*)—Not Entitled to Commissions in Producing Purchaser Not Able Nor Willing to Purchase within Time Fixed Due to Defects in Title.—Where brokers under an agreement with owner to sell property within a time fixed produced a purchaser who was not able himself nor willing, on account of alleged defects in the title, to complete the contract of sale within the time fixed, held, that owner was not liable for brokers' commissions.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 266.]

Error to Circuit Court, Halifax County.

Action by F. W. Bishop and J. D. Fry, partners trading as the Bishop-Fry Company, and others, against E. M. Terry. From a judgment for plaintiffs, defendant brings error. Reversed, and final judgment entered.

B. W. Leigh, of Halifax, and *Jas. H. Guthrie*, of South Boston, for plaintiff in error.

John Martin, of South Boston, for defendants in error.

HUTCHINSON *v.* COMMONWEALTH.

June 15, 1922.

[112 S. E. 624.]

1. Larceny (§ 45*)—Evidence Held Admissible to Identify the Stolen Property.—In a prosecution for larceny of Liberty Bonds sent by a New York bank to a local bank, evidence by the cashier of the local bank that the bond which was recovered was like the others and that an envelope shown witness, with the address of the New York bank at the bottom, was like the envelopes in which all the bonds came to his bank from the New York bank, held admissible to further identify the property, where a letter from the New York bank to the

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

local bank, describing the bonds, was admitted without objection from accused.

[Ed. Note.—For other cases, see 9 Va.-W. Va. Enc. Dig. 229.]

2. Criminal Law (§ 1169 (7)*)—Evidence as to Conversation with Accomplice Out of Presence of Accused Held Harmless Error.—In a prosecution for receiving lost Liberty Bonds, the permitting of the finder of the bonds to testify as to conversations had with another accomplice and the cashier of the bank which owned the bonds, out of the presence of the accused, held harmless error.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 80.]

3. Criminal Law (§ 1137 (5)*)—Overruling of Objection to Testimony Not Reversible Error When Asked Similar Question.—The overruling of an objection by accused to a statement of a witness was not reversible error, where the witness, in response to a question by accused, made the same statement without objection.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 592.]

4. Larceny (§. 49*)—A Showing of What Became of Liberty Bonds and Part Accused Took in Disposition Held Proper.—Where the evidence showed that accused had received lost Liberty Bonds and carried them in his pocket to another city, it was proper for the commonwealth to show what became of the bonds after reaching the other city and what part accused took in their disposition.

[Ed. Note.—For other cases, see 9 Va.-W. Va. Enc. Dig. 229.]

5. Criminal Law (§ 899*)—Objection to Testimony Held Waived Where Objecting Party Later Examined Witness on Same Subject.—Objection by accused to testimony of a state witness held waived, where accused later examined the witness on the same matters and accused subsequently testified on the same matters.

[Ed. Note.—For other cases, see 5 Va.-W. Va. Enc. Dig. 348.]

6. Criminal Law (§ 678 (5)*)—Where Accused Fails to Ask Prosecutor for Statement of What He Intends to Rely on, Prosecutor May Ask for a Conviction as Shown by the Evidence.—Under Code 1919, § 4451, where a person indicted for larceny fails to demand from the prosecuting attorney a statement in writing of what he intends to rely upon for a conviction, the prosecutor may ask for a conviction for receiving stolen goods or for receiving lost goods, as might be shown by the evidence.

[Ed. Note.—For other cases, see 9 Va.-W. Va. Enc. Dig. 234.]

7. Receiving Stolen Goods (§ 1*)—Receiving Lost Property from Finder with Knowledge of Ownership an Offense.—Under Code 1919, § 4448, providing that any person buying or receiving stolen goods knowing the same to have been stolen shall be guilty of larceny, accused, who received Liberty Bonds from the finder under such circumstances as to inform him who the owner was, and appropriated

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the bonds to his own use without the consent of the owner, was guilty of larceny.

[Ed. Note.—For other cases, see 9 Va.-W. Va. Enc. Dig. 211.]

8. Larceny (§ 55*)—Evidence Held Sufficient to Warrant Conviction.—In a prosecution for larceny, evidence held sufficient to warrant conviction.

[Ed. Note.—For other cases, see 9 Va.-W. Va. Enc. Dig. 230.]

Error to Corporation Court of Lynchburg.

Lash Hutchinson was convicted of larceny, and brings error. Affirmed.

Hester & Hester, of Lynchburg, for plaintiff in error.

John R. Saunders, Atty. Gen., for the Commonwealth.

DAVIS, Director General of Railroads *v.* MERRILL.

June 15, 1922.

[112 S. E. 628.]

1. Trial (§ 253 (9)*)—Instruction Concerning Liability of Master for Act of Insane Employee Held Properly Refused under the Evidence.—In an action for death caused by act of defendant's insane servant by means of a pistol, court properly refused to instruct that, if the jury believed from the evidence that servant's duties as crossing watchman did not authorize or require him to commit the act, but that it was his personal act outside of the scope of his duty, then they must find for the defendant, was properly refused, where there was evidence tending to support plaintiff's contention that defendant was liable for its conduct in employing such servant for gateman, in that it knew, or by the exercise of ordinary care ought to have known, he was an unfit person for the position.

[Ed. Note.—For other cases, see 9 Va.-W. Va. Enc. Dig. 727.]

2. Trial (§ 260*)—Instruction Covered by Given Instruction Properly Refused.—Court properly refused to give an instruction covered by a given instruction.

[Ed. Note.—For other cases, see 7 Va.-W. Va. Enc. Dig. 742.]

3. Master and Servant (§ 302 (3)*)—Master Liable for Assaults of Servant within Scope of Employment.—Both corporation and individuals should be required to answer in damages for wanton and malicious assaults inflicted upon others by their servants while acting within the scope of the servant's employment and duty, and it matters not whether the act of the servant is due to a lack of judgment, the infirmity of temper, or the influence of passion, or that the servant goes beyond his strict line of duty and authority in inflicting such injury.

[Ed. Note.—For other cases, see 9 Va.-W. Va. Enc. Dig. 729.]

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